
In the United States
Circuit Court of Appeals
For the Ninth Circuit. //

PAN AMERICAN PETROLEUM COMPANY, and
WILLIAM C. McDUFFIE, as Receiver of Richfield
Oil Company of California,

Appellants,

vs.

THE CHASE NATIONAL BANK OF THE CITY
OF NEW YORK,

Appellee.

Transcript of Record.

Upon Appeal from the District Court of the United States for the
Southern District of California, Central Division.

FILED

FEB 15 1935

PAUL B. SHAWEN,
CLERK

In the United States
Circuit Court of Appeals
For the Ninth Circuit.

PAN AMERICAN PETROLEUM COMPANY, and
WILLIAM C. McDUFFIE, as Receiver of Richfield
Oil Company of California,

Appellants,

vs.

THE CHASE NATIONAL BANK OF THE CITY
OF NEW YORK,

Appellee.

Transcript of Record.

Upon Appeal from the District Court of the United States for the
Southern District of California, Central Division.

INDEX.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italics; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

	PAGE
Acknowledgment of Service of Assignment of Errors, Petition for Appeal and Order Granting Appeal.....	78
Answer of Pan American Petroleum Company.....	32
Answer of William C. McDuffie as Receiver of Pan American Petroleum Company.....	38
Answer of William C. McDuffie as Receiver of Rich- field Oil Company of California.....	26
Assignment of Errors.....	74
Citation	2
Clerk's Certificate.....	82
Complaint	4
Decree	68
Motion for Judgment.....	57
Motion to Strike from Complaint.....	42
Motion to Strike from Complaint.....	48
Names and Addresses of Attorneys.....	1
Notice of Motion for Judgment.....	55
Notice of Motion to Strike from Complaint.....	40
Notice of Motion to Strike from Complaint.....	46
Opinion and Order.....	61
Order Allowing Appeal.....	76

Order of November 2, 1934, that Motions to Strike Certain Portions of Complaint are Submitted for Decision	52
Order of January 16, 1935, Denying Motions to Strike	54
Order of January 25, 1935, Ordering Judgment in Favor of Plaintiff.....	59
Petition for Appeal.....	72
Praecipe	79
Stipulation that Motions to Strike Certain Portions of Complaint be Submitted Without Argument.....	52
Stipulation that no Bond or Undertaking be Required and That an Order May be Entered to That Effect without Further Notice.....	77

Names and Addresses of Attorneys.

For Defendant and Appellant William C. McDuffie, as
Receiver of Richfield Oil Company of California :

GIBSON, DUNN & CRUTCHER, Esqs.,

HOMER D. CROTTY, Esq.,

1000 Banks-Huntley Building,

Los Angeles, California.

For Defendant and Appellant Pan American Petroleum
Company :

CLAYTON T. COCHRAN, Esq.,

1018 Richfield Building,

Los Angeles, California.

For Plaintiff and Appellee :

MUDGE, STERN, WILLIAMS & TUCKER,
Esqs.,

FRESTON & FILES, Esqs.,

CLARENCE M. HANSON, Esq.,

Bank of America Building,

Los Angeles, California.

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF CALI-
FORNIA CENTRAL DIVISION

The Chase National Bank of the City)	
of New York,)	
)	
	)	Plaintiff,
)	
)	
	)	vs.
)	
	)	No. Eq-419-J
Pan American Petroleum Company,)	
William C. McDuffie, as Receiver of	)	CITATION
Pan American Petroleum Company,	)	ON APPEAL
and William C. McDuffie, as Receiver)	
of Richfield Oil Company of Cali-)	
fornia,)	
)	
	)	Defendants.

UNITED STATES OF AMERICA,)	
	)	SS
NINTH JUDICIAL CIRCUIT)	

TO: THE CHASE NATIONAL BANK OF THE
CITY OF NEW YORK, APPELLEE, GREET-
INGS:

You are hereby cited and admonished to appear at a Session of the United States Circuit Court of Appeals for the Ninth Circuit to be held in the City of San Francisco, State of California, in said Circuit, within thirty days from and after the date of this writ, pursuant to an

order filed in the office of the clerk of the United States District Court for the Southern District of California, Central Division, allowing an appeal by Pan American Petroleum Company and William C. McDuffie, as Receiver of Richfield Oil Company of California, from that certain order, judgment, decree and declaration made and entered by said United States District Court in said cause on January 25, 1935, in which Appeal, you, the party first above mentioned, are the Appellee, and Pan American Petroleum Company and William C. McDuffie, as Receiver of Richfield Oil Company of California are Appellants, to show cause, if any there be, why said order, judgment, decree and declaration in said United States District Court, above mentioned, should not be corrected and speedy justice should not be done to the parties on that behalf.

WITNESS the Honorable Wm. P. James, Judge of the District Court of the United States in and for the Southern District of California, Central Division, Ninth Judicial Circuit, this 26 day of January, 1935.

Wm. P. James

Judge of the United States District Court, Southern District of California, Central Division.

[Endorsed]: Due service of this Citation is admitted this 26 day of January, 1935. Mudge, Stern, Williams & Tucker. Freston & Files By Clarence M. Hanson, M. F. Solicitors for plaintiff. Filed Jan. 26, 1935.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN
DISTRICT OF CALIFORNIA,
CENTRAL DIVISION.

THE CHASE NATIONAL BANK)		
OF THE CITY OF NEW YORK,))	
)	
	)	Plaintiff,)
)	
against)	
	)	In Equity
PAN AMERICAN PETROLEUM))	
COMPANY, WILLIAM C. McDUF- )	)	Cause No. 419-J
FIE, as Receiver of Pan American Pe-))	
troleum Company, and WILLIAM C.))	
McDUFFIE, as Receiver of Richfield))	
Oil Company of California,))	
)	
	)	Defendants.)

COMPLAINT FOR DECLARATORY JUDGMENT.

To the Honorable, the Judges of the District Court of the United States, for the Southern District of California, Central Division:

The Chase National Bank of the City of New York, a Trustee under the Mortgage and Deed of Trust of Pan American Petroleum Company, dated as of December 15, 1925 (hereinafter sometimes called the "First

Mortgage”) by leave of this Court first duly had and obtained, brings this its Bill of Complaint against Pan American Petroleum Company (hereinafter sometimes called “Pan American”), William C. McDuffie, as Receiver of Pan American Petroleum Company, and William C. McDuffie, as Receiver of Richfield Oil Company of California (hereinafter sometimes called “Richfield”) and said plaintiff shows to this Court as follows:

1. The plaintiff, The Chase National Bank of the City of New York, is, and at all the times wherein it is hereinafter mentioned was, a national banking association duly organized and existing under and by virtue of the laws of the United States of America, having its principal office and place of business at No. 18 Pine Street, in the Borough of Manhattan in the City and County of New York, a citizen of the State of New York and a resident and inhabitant of the Southern District of New York.

2. The defendant, Pan American Petroleum Company, is, and at all times wherein it is hereinafter mentioned was, a corporation duly organized and existing under and by virtue of the laws of the State of California, having its principal office and place of business in the City and County of Los Angeles in said State, a citizen of said State and a resident and inhabitant of the Southern District of California.

3. The defendant, William C. McDuffie, sued herein as Receiver of Pan American and as Receiver of Richfield, is a citizen and resident of the State of California and a resident and inhabitant of the Southern District of California.

4. This suit is brought under and by virtue of the provisions of an Act of Congress, to-wit, Section 274D of

the Judicial Code, and there are three separate grounds upon which the jurisdiction of this Court depends, namely:

FIRST: This is a suit of a civil nature in which the matter in controversy exceeds, exclusive of interest and costs, the sum or value of Three thousand dollars (\$3,000.00) between citizens of different states, the full name, citizenship and residence of each of the parties hereto being as set forth above,

SECOND: This is a suit arising under the Constitution and under the laws of the United States, in which the matter in controversy exceeds, exclusive of interest and costs, the sum or value of Three thousand dollars (\$3,000.00), for a declaratory judgment, declaring the rights of the plaintiffs and the defendants herein under an Act of Congress, to wit, Title 28, Section 847, of the United States Code as amended June 19, 1934,

THIRD: A substantial part of the property and premises owned by Pan American, including certain real estate and interests in land, in respect of the sale of which said declaratory judgment is sought is in the possession and custody and under the control of this Honorable Court, being in the possession of William C. McDuffie, as Receiver of Pan American Petroleum Company appointed by this Court in Consolidated Cause No. W-46-J and in Cause No. W-102-J, and is in the process of administration by this Honorable Court, and this suit, in so far as the jurisdiction of this Court depends upon this ground, is a suit ancillary to Consolidated Cause No. W-102-J pending in this Court, into which said causes were consolidated.

5. On or about March 5, 1932 the Suffolk Corporation, a corporation duly organized and existing under

any by virtue of the laws of the State of Delaware, a citizen of said State and a resident and inhabitant of the District of Delaware, brought a suit against Pan American, a corporation duly organized and existing under and by virtue of the laws of the State of California, a citizen of said State and a resident and inhabitant of the Southern District of California, in this Court, designated as Equity Cause No. W-45-J, wherein the matter in controversy exceeded, exclusive of interest and costs, the sum or value of three thousand dollars (\$3,000.00). On or about March 5, 1932, said William C. McDuffie as Receiver of Richfield brought a suit against Pan American in this Court designated as Equity Cause No. W-46-J, which cause was ancillary to Cause No. S-125-J, hereinafter mentioned in Paragraph 6 hereof. Said Cause No. W-46-J and said Cause No. W-45-J were consolidated into Consolidated Cause No. W-46-J. This Court in said Consolidated Cause No. W-46-J by its order entered March 5, 1932, duly appointed William C. McDuffie receiver of all property and assets of Pan American, real, personal and mixed and of whatsoever kind and description and wheresoever situated. Said William C. McDuffie so appointed receiver duly qualified as such and thereupon, under and by virtue of the said order, duly entered upon and took possession of all the property and assets of Pan American of every kind and description within the jurisdiction of this Court, and ever since has continued to hold possession of such assets.

On April 30, 1932, The Chase National Bank of the City of New York, the plaintiff herein, and Bank of America, as Trustees under the First Mortgage of Pan American, filed in this Court against Pan American and

others a bill of complaint to foreclose the First Mortgage of Pan American securing an outstanding issue of its First Mortgage 15-Year Convertible 6% Sinking Fund Gold Bonds aggregating \$10,441,400 in principal amount, said cause in this Court being designated as Equity Cause No. W-102-J. Prior to the filing of said Bill of Foreclosure, the said trustees first applied for and obtained the consent of this Court in said Consolidated Cause No. W-46-J to file said Bill to foreclose the said mortgage upon assets then in possession and custody of this Court, said Foreclosure Cause being ancillary to said Consolidated Cause No. W-46-J. Subsequently said Consolidated Cause No. W-46-J and said Foreclosure Cause No. W-102-J were consolidated into Consolidated Cause No. W-102-J.

6. On or about January 15, 1931, The Republic Supply Company of California, a corporation duly organized and existing under and by virtue of the laws of the State of California, a citizen of said State and a resident and inhabitant of the Southern District of California brought a suit against Richfield Oil Company of California, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, a citizen of said State, and a resident and inhabitant of the District of Delaware, in this Court, Equity Cause No. S-125-J, wherein the matter in controversy exceeded, exclusive of interest and costs, the sum or value of Three thousand dollars (\$3,000.00). This Court in said cause by its order entered January 15, 1931 duly appointed William C. McDuffie receiver of all the property and assets of Richfield, real, personal, and mixed, of whatsoever kind and description, within the jurisdiction of

this Court. Said William C. McDuffie so appointed receiver duly qualified as such and thereupon, under and by virtue of the said order, duly entered upon and took possession of all the property and assets of Richfield of every kind and description within the jurisdiction of this Court, and ever since has continued to hold possession of such assets and to operate the same. Richfield owns, subject to the lien of its Trust Indenture, dated May 1, 1929, securing its Collateral Trust Gold Bonds, all of the outstanding capital stock of Pan American. The Richfield Receiver has been operating properties of Pan American Petroleum Company since his appointment as such Richfield Receiver.

On or about July 28, 1931, the Security-First National Bank of Los Angeles, as Trustee, brought an action against Richfield and William C. McDuffie as Receiver of Richfield and other parties to foreclose the said Trust Indenture of Richfield, dated May 1, 1929, securing an outstanding bond issue of \$24,981,000 principal amount, which action was designated Equity Cause No. X-63-J. Said Cause No. S-125-J and said Cause No. X-63-J were consolidated into Consolidated Cause No. S-125-J.

7. Among the assets of Pan American involved in said Consolidated Cause No. W-102-J are certain personal property and certain real estate and interests in land in large amounts, part of which personal property and part of which real estate and interests in land have been held in said Consolidated Cause to be mortgaged and part of which have been held to be unmortgaged. Similarly, among the assets of Richfield involved in said Consolidated Cause No. S-125-J are certain personal property and certain real estate and interests in land in large

amounts, part of which personal property and part of which real estate and interests in land have been held in said Consolidated Cause to be mortgaged and part of which have been held to be unmortgaged. In said Cause No. W-102-J, the receivership of said William C. McDuffie was extended to cover the mortgaged assets of Pan American within the jurisdiction of this Court and said Receiver is still the Receiver in said Cause No. W-102-J. In said Cause No. X-63-J, the receivership of William C. McDuffie was extended to cover the mortgaged assets of Richfield and said Receiver is still the receiver in said Cause No. X-63-J.

The real estate and interests in land of Pan American within the jurisdiction of this Court are intermingled with said personal property of Pan American and both are operated together as an integral unit of a going industrial concern.

It appearing to this Court that the properties and assets of Richfield and Pan American constituted such an integrated business unit from an operating standpoint as to make it probable that a joint sale of said properties may bring a higher sales price than would be obtained if the assets of Richfield and the assets of Pan American were sold separately; and it further appearing that a consolidation of the proceedings in the Richfield causes and in the Pan American causes with respect to hearings and orders on reorganization and sale of all of said properties, was reasonable and would serve the purpose of avoiding unnecessary costs or delays in the administration of justice, an order was made and entered by this Court on January 25, 1934, consolidating said Richfield causes designated as Consolidated Cause No. S-125-J and said Pan Amer-

ican causes designated as Consolidated Cause No. W-102-J for the purposes set forth in said order of consolidation, which order provided that all hearings, pleadings, orders, and other instruments or papers and any proceedings relating to the purposes for which said consolidation was ordered should be entitled, under the caption therein set forth, "In Equity, Consolidated Cause No. S-125-J," said consolidated cause being hereinafter referred to as the Consolidated Foreclosure Cause.

8. Prior to June 19, 1934, the date of the enactment of the amendment to Title 28, Section 847 of the United States Code, hereinafter set forth in Paragraph 9 hereof,

(a) the Pan American First Mortgage, hereinbefore mentioned, had been executed and delivered and the bonds secured thereby had been duly issued and sold to the public and were on said date valid and subsisting outstanding obligations of Pan American in the principal amount of \$10,441,400;

(b) Suffolk Corporation was a creditor of Pan American, and had instituted the said suit designated as Equity Cause No. W-45-J to obtain the appointment of a receiver of the assets of Pan American and said William C. McDuffie had been appointed receiver as hereinbefore mentioned and said cause was then pending, and said William C. McDuffie was then acting as Receiver of the assets of Pan American within the jurisdiction of this Court, and is still so acting, and said cause is still pending in this Court;

(c) the said Foreclosure Cause No. W-102-J had been instituted by the Trustee under the First Mortgage of Pan American to foreclose said mortgage for the benefit

of the holders of the said outstanding bonds of Pan American, said receivership of William C. McDuffie had been extended to the mortgaged assets in said Cause No. W-102-J, said cause was pending on said date and is still pending and said William C. McDuffie was then acting as Receiver of the mortgaged assets of Pan American and is still so acting, and all other causes hereinbefore mentioned had been instituted and were then pending and are still pending in this Court;

(d) in said Consolidated Foreclosure Cause a motion had been made, returnable June 11, 1934, for this Court to settle the Final Decree of Foreclosure and Sale and cause the same to be signed, filed and entered, and was argued on said date, and the plaintiff herein, and other parties to said Consolidated Foreclosure Cause had presented to this Court on June 11, 1934 for signature a proposed Final Decree of Foreclosure and Sale providing for the sale at public judicial sale of substantially all of tangible property and assets of Pan American, including certain real estate and interests in land, and for the foreclosure of the First Mortgage in respect of all mortgaged property subject thereto including certain real estate and interests in land. Said Final Decree of Foreclosure and Sale has not yet been signed by this Court.

Promptly upon the signing by this Court of the Decree of Foreclosure and Sale a public judicial sale of said property of Pan American, including certain real estate and interests in land, will be had in the manner provided in Title 28, Sections 847 and 848 of the United States Code, unless it is necessary, by reason of the provisions of the amendment of Section 847 enacted June 19, 1934, that there be an appraisal under said statute as amended.

9. Title 28, §§847 and 848 of the United States Code (Act of Congress of March 3, 1893, c. 225, §§1 and 2, 27 Stat. 751) until the amendment of the Act on June 19, 1934, hereinafter referred to, read as follows:

“§847. Sales: real property under order or decree. All real estate or any interest in land sold under any order or decree of any United States Court shall be sold at public sale at the courthouse of the county, parish, or city in which the property, or the greater part thereof, is located, or upon the premises, as the court rendering such order or decree of sale may direct.

“§848. Same; personal property under order or decree. All personal property sold under any order or decree of any court of the United States shall be sold as provided in section 847 of this title, unless in the opinion of the court rendering such order or decree it would be best to sell it in some other manner.”

The said Act of Congress of March 3, 1893, was amended by Act of Congress on June 19, 1934 by changing the period at the end of §847 above quoted to a colon and adding to said §847 the following:

“Provided, however, That the court may, upon petition therefor and a hearing thereon after such notice to parties in interest as said court shall direct, if it find that the best interests of said estate will be conserved thereby, order and decree the sale of such real estate or interest in land at private sale; Provided further, That the court shall appoint three disinterested persons to appraise said property, and said sale shall not be confirmed for less than two-thirds of the appraised value.”

Said amendment is hereinafter referred to as the Appraisal Amendment.

10. An actual controversy exists between the plaintiff herein and the defendants Pan American and William C. McDuffie, as Receiver of Richfield, in that

A. The plaintiff herein contends that the Appraisal Amendment does not apply to a public judicial sale of any or all of the Pan American assets within the jurisdiction of this Court whether constituting personal property or real estate or interests in land to be held in said Consolidated Foreclosure Cause and said constituted causes thereof, and does not require the appointment by the Court of appraisers to appraise any or all of such assets, either before the date of such sale or after the date of such sale prior to the confirmation of such sale, and that any such sale, if determined by the Court otherwise to be fair and equitable, should be confirmed without compliance with the provisions of said Appraisal Amendment; which contention plaintiff makes on the following grounds:

1. That the Appraisal Amendment does not apply to public sales of real estate or interests in lands in judicial proceedings;

2. That the Appraisal Amendment does not apply to public sales of personal property in judicial proceedings;

3. That the Appraisal Amendment, if applicable to public sales in judicial proceedings of real estate or interests in land, does not apply to sales in judicial proceedings of real estate or interests in land where the same is intermingled with personal property and both are operated together as an integral unit of a going industrial concern such as Pan American;

4. That the Appraisal Amendment if applicable to public sales in judicial proceedings does not apply to sales held in judicial proceedings which were instituted prior to June 19, 1934, the date of the enactment of said Amendment, by creditors to enforce obligations incurred prior thereto, or to foreclosure proceedings instituted prior thereto to foreclose mortgages executed prior to said date to secure obligations validly issued and outstanding before the date of the enactment of said Amendment.

B. The plaintiff herein further contends that if the Appraisal Amendment is applicable to a public judicial sale to be held in the said Consolidated Foreclosure Cause, and the said constituent causes thereof, of real estate or interests in land or other assets, it does not require the appointment of appraisers and an appraisal prior to the time of the sale, but only requires the appointment of appraisers and an appraisal prior to the confirmation of such sale in said Consolidated Foreclosure Cause and the constituent causes thereof.

C. The plaintiff herein further contends that if said Appraisal Amendment is applicable to public judicial sales of real estate or interests in land of Pan American in said pending Consolidated Foreclosure Cause and said constituent causes thereof, it does not apply to the judicial sale in said Consolidated Foreclosure Cause and said constituent causes thereof of any Pan American assets in so far as they consist of personal property or property other than real estate or interests in land, and that such personal property and other property may be sold in said Consolidated Foreclosure Cause and said constituent causes thereof at a judicial sale without the appointment of any

appraisers to appraise said personal property or other property other than real estate or interests in land.

D. Plaintiff herein further contends that if the Appraisal Amendment applies to public judicial sales of real estate or interests in land or other property of Pan American to be sold in said Consolidated Foreclosure Cause or said constituent causes thereof, all of which were instituted prior to June 19, 1934, the date of the enactment of said Appraisal Amendment, to enforce claims existing prior to said date and to foreclose mortgages executed and delivered to secure obligations validly issued and outstanding prior to said date, the said Appraisal Amendment is unconstitutional and void, in violation of the Fifth Amendment of the Constitution of the United States, prohibiting the taking of property without due process of law, in that it materially and adversely, arbitrarily and illegally affects and substantially impairs both the substantive and the remedial rights of the plaintiff herein.

E. The plaintiff is informed and believes and therefore alleges that the defendants Pan American and William C. McDuffie as Receiver of Richfield deny and oppose each and all of the foregoing contentions mentioned in subdivisions A, B, C, and D of this Paragraph 10, and contend that prior to any judicial sale of any real estate or interests in land of Pan American or any sale of personal property or other assets of Pan American in said Consolidated Foreclosure Cause and said constituent causes thereof, this Court must appoint appraisers as provided in said Appraisal Amendment, an appraisal must be had prior to the time of any such sale of both the real estate and interests in land of Pan American and of the personal property and other assets of Pan American to be sold

therein, and no such sale of real estate or interests in land of Pan American can be confirmed by the Court for less than two-thirds of the appraised value thereof, and no such sale of any personal property or other assets of Pan American can be confirmed by the Court for less than two-thirds of the appraised value thereof, and that said Appraisal Amendment as so construed and applied is in all respects valid, legal, and constitutional.

F. A controversy also exists between the plaintiff herein and the defendants Pan American and William C. McDuffie as Receiver of Richfield in that they cannot agree on the meaning of the term "appraised value" in the Appraisal Amendment, and if such Appraisal Amendment is applicable to a public judicial sale of the real estate and interests in land and other property of Pan American it will be necessary to know on what basis the property should be appraised, whether on the basis of a going concern, the fair and reasonable market value at the time of sale, the fair and reasonable value under normal conditions, the cost less depreciation, the cost of reproduction, the fair and reasonable market value at a fair judicial sale, or otherwise.

11. The plaintiff is informed and believes and therefore alleges that a declaratory judgment as prayed for herein is the sole remedy which can give a speedy and conclusive determination of the aforesaid controversy which exists between the plaintiffs and the defendants Pan American and William C. McDuffie as Receiver of Richfield for the reason that the controversy cannot be determined without long delay in said Consolidated Foreclosure Cause or in said constituent causes thereof because any order of this Court therein appointing ap-

praisers will not constitute a final appealable order of this Court, and such appeal could not be taken until after an appraisal of the property of Pan American had been made and a sale of such property held, and that such course of action would involve long delay, great expense and irreparable loss to the plaintiff, to the Pan American bondholders, to other Pan American creditors, and to the Government of the United States, which is entitled as hereinafter in paragraph 12 hereof set forth to receive the sum of \$5,001,500, subject to certain adjustments, upon the sale of the properties to be sold in said Consolidated Foreclosure Cause and said constituent causes, and that such delay, expense, and loss will be caused and incurred by reason, among other things, of the following:

(1) The cost of an appraisal has been variously estimated at from \$50,000 to \$300,000, and the time that such appraisal would take has been variously estimated at from two to three months to one year. If as a result of appeals taken after the appraisal and after the sale it should be determined that no appraisal were necessary, the cost thereof and the delay involved would have been needlessly incurred.

(2) That if the Appraisal Statute applies only to real estate and interests in land of Pan American and not to personal and other property of Pan American, it would be necessary for the Court to segregate the real estate and interests in land from the personal and other property of Pan American before it will be possible for the appraisers to appraise the real estate and interests in land; that the separation of such personal property which consists in part of machinery and other property used in and about refineries, oil wells, and service stations and

other marketing and production facilities of Pan American will involve intricate questions of law and fact, similar in nature to the problems heretofore involved in the segregation of the mortgaged and unmortgaged assets of Pan American and Richfield in said Consolidated Foreclosure Cause and the said constituent causes, which segregation required a reference before a special master in hearings which extended over a period of more than one year, as well as the argument of exceptions to the special master's report and the passing upon such exceptions to the master's report by this Court, all of which required several months; that similar delay would be required in the segregation of the personal and other property from the real estate and interests in land of Pan American which might involve similar exceptions and determinations by this Court and might further involve appeals before the determination of the appraised value of the property to be offered for sale.

(3) If the said sale of real estate or interests in land and other assets of Pan American is held in said Consolidated Foreclosure Cause and in said constituent causes thereof without an appraisal pursuant to said Appraisal Amendment, the bidding on the property will be chilled for the reason that a doubt would exist as to whether a good title could be transferred at such judicial sale to such property without an appraisal, which doubt has already been expressed by certain prospective bidders, as well as a leading title company in Los Angeles, California.

(4) If the said sale of real estate or interests in land and other assets of Pan American is held in said Consolidated Foreclosure Cause and in said constituent causes after the appointment of appraisers and an appraisal

of such real estate or interest in land or other property before the sale thereof, the bidding will be chilled for the following reason:

The combined properties of Richfield and Pan American, exclusive of certain intangibles, were appraised as of January 15, 1931, by engineers retained by the Receiver on a going concern basis at approximately \$69,000,000, and on a forced sale basis at approximately \$24,000,000. If the appraisers appointed by the Court should again appraise the properties at \$69,000,000, the properties involved would have to be purchased at the said judicial sale for two-thirds of that amount, namely, for \$46,000,000, if the Appraisal Amendment is applicable, or the sale would not be confirmed. Many prospective purchasers might be able, willing, and anxious to bid less than \$46,000,000 for the property but would be deterred from bidding by reason of such appraisal of \$69,000,000 and similarly the bidding would be chilled if the property should be appraised at any other particular amount by eliminating possible bidders who would desire to bid less than two-thirds of said appraised amount. If it should be determined, after such appraisal had been had, that the Appraisal Statute were inapplicable, the loss to the bondholders, creditors, and the Government of the United States would be irreparable on account of such chilling of the bidding at said judicial sale.

(5) The Pan American receiver has repeatedly reported to the Court in his periodic reports filed in the Consolidated Foreclosure Cause in substance that the properties of Richfield and Pan American should be sold at an early date on account of his opinion that only through a prompt sale or reorganization can the best return be made to the creditors and bondholders of the

companies, and has testified in proceedings before the Court in said Consolidated Foreclosure Cause and said constituent causes thereof that the interests of the creditors and bondholders will be imperiled by long continuance of the receivership proceedings on account of the fact that approximately 85% of the oil required for the operation of the Richfield and Pan American properties must be purchased from others and that recently during one of the periodic gasoline price wars he has had to sell gasoline at a loss.

(6) That in view of the appraisal made by engineers retained by the Receivers of the Richfield and Pan American properties at approximately \$69,000,000, as aforesaid (which, if again appraised at said amount, would require a bid of \$46,000,000 in order to have the sale confirmed) and in view of the fact that after prolonging negotiations for the sale of these properties by committees representing various classes of creditors and bondholders of Pan American and Richfield, and after wide publicity of the fact that these properties are for sale, no firm offers have been received from any prospective purchasers to the knowledge of plaintiff except for amounts many million dollars less than \$46,000,000, it seems probable that no foreclosure sale of the mortgaged property or no judicial sale of the other properties of Pan American could be consummated; and in that case the receivership of Pan American and Richfield would be continued indefinitely and the bondholders, creditors, and the Government would be delayed in recovering upon their claims, and large costs in advertising and holding such sale would have been needlessly incurred.

(7) That in said Consolidated Foreclosure Cause, and certain constituent causes thereof, this Court has taken

jurisdiction and supervision of a plan and agreement of reorganization involving the sale of the unmortgaged assets of Pan American for \$525,000 and all of the other assets of Pan American and Richfield with certain exceptions for \$23,500,000 payable in cash and securities, to a purchaser whose offer has been accepted by certain committees of bondholders and creditors of Pan American and Richfield, and that plaintiff is advised by said committees that said plan has been accepted by a majority of the Pan American bondholders, but that unless said sale can be held without undue delay the said plan is in imminent danger of collapsing through the withdrawal of said offer by said purchaser, and said committees have urged this Court and the plaintiff, by motions made in said Consolidated Foreclosure Cause and certain constituent causes thereof, and otherwise, to effect a prompt sale of such properties so that such offer would not be lost, and so that the receivership could be terminated and the property sold to such purchaser or to any other purchasers making a better bid for the properties.

12. Among the creditors of Pan American is the United States of America (hereinafter called the "Government") which holds a judgment against Pan American in the sum of Nine million, two hundred seventy-seven thousand, six hundred sixty-six and seventeen one-hundredths dollars (\$9,277,666.17), together with interest thereon at 7% per annum from November 29, 1932, which judgment was obtained on or about January 14, 1933, in the case of United States of America v. Pan American Petroleum Company, In Equity, Cause No. B-115-M. The Government intervened in certain of the constituent causes of said Consolidated Foreclosure Cause and is a party to said Consolidated Foreclosure Cause. Pursuant to a stip-

ulation of settlement dated January 17, 1933, the Government will be entitled to the payment of the sum of \$5,-001,500, subject to certain adjustments, upon the sale of Pan American and Richfield assets in said Consolidated Foreclosure Cause. Said stipulation was approved by the Attorney General and the Secretary of the Navy pursuant to a joint resolution of the Congress of the United States (Senate Joint Resolution No. 13, 73rd Congress), signed by the President of the United States, and said stipulation was also approved by this Court in orders entered May 15, 1933.

The plaintiff is informed and believes and therefore alleges that the holding of an appraisal in said Consolidated Foreclosure Cause and said constituent causes will cause unnecessary delay and expense and cause great loss to the Government which is not receiving interest on its claim under the terms of the aforesaid stipulation, which was made, entered into and approved with the expectation that there would be an early sale of the assets in said Consolidated Foreclosure Cause and said constituent causes.

WHEREFORE, the plaintiff prays that a declaratory judgment be made and entered herein by this Court, adjudging and decreeing:

(1) That the Appraisal Amendment does not apply to a public judicial sale of any or all of the Pan American assets within the jurisdiction of this Court, whether constituting personal property or real estate or interests, in land to be held in said Consolidated Foreclosure Cause and said constituent causes thereof and does not require the appointment by the Court of appraisers to appraise any or all of such assets, either before the date of such

sale or after the date of such sale prior to the confirmation of such sale, and that any such sale, if determined by the Court otherwise to be fair and equitable, should be confirmed without compliance with the provisions of said Appraisal Amendment; or adjudging and decreeing to what extent such Appraisal Amendment is applicable to such public judicial sale, and when such appraisers must be appointed and said appraisal made.

(2) The meaning of the term "appraised value" in the Appraisal Amendment, if it applies to such sale, and the basis upon which such value should be determined by such appraisers.

(3) That the Appraisal Amendment, if applicable to the sale of real estate or interests in land or other assets of Pan American to be sold at public judicial sale in the said Consolidated Foreclosure Cause and said constituent causes thereof, is unconstitutional, null, and void.

(4) That the plaintiff may have such other, different and further relief, decree or judgment in the premises as may be just and proper, together with the costs and disbursements of this suit.

Joseph V. Kline

Clarence M. Hanson

Solicitors for plaintiff The Chase National Bank of the
City of New York.

MUDGE, STERN, WILLIAMS & TUCKER,

20 Pine Street,

New York, N. Y.

FRESTON & FILES,

650 South Spring Street,

Los Angeles, California.

STATE OF NEW YORK,)
) ss. :
 COUNTY OF NEW YORK,)

GEORGE A. KINNEY, being duly sworn, deposes and says, that he is an officer of THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, the plaintiffs above named, to wit, a Vice-President thereof, that he has read the foregoing bill of complaint and knows the contents thereof, that the allegations contained therein in respect to the acts of said The Chase National Bank of the City of New York are true to his own knowledge, and that as to all other allegations contained therein he is credibly informed and believes that the same are true; that the reason this affidavit of verification is made by him and not by said plaintiff is that said plaintiff is a National Banking Association and he is said officer thereof.

George A. Kinney

Sworn to before me this 18th *18th* day of October, 1934.

[Seal]

T. J. Pol

T. J. POL

Notary Public, New York County
 N. Y. Co. Clk's No. 263, Reg. No. 5P359
 Commission expires March 30, 1935

[Endorsed]: Filed Oct. 20, 1934.

[TITLE OF COURT AND CAUSE.]

ANSWER OF DEFENDANT WILLIAM C. McDUFFIE, as Receiver of RICHFIELD OIL COMPANY OF CALIFORNIA.

To the Honorable, the Judges of the District Court of the United States, for the Southern District of California, Central Division:

The defendant, William C. McDuffie, as Receiver of Richfield Oil Company of California, in answer to the Bill of Complaint, on file herein,

I.

Admits all of the allegations contained in paragraphs 1 to 9, inclusive, and the first paragraph and the subparagraphs 1, 2, 3, 5 and 7 of paragraph 11 and the first paragraph of paragraph 12.

II.

Alleges that Richfield Oil Company of California of which this defendant is the Receiver owns \$1,296,000.00 par amount of the bonds secured by the First Mortgage between The Chase National Bank of the City of New York and Bank of America, as Trustees, and Pan American Petroleum Company, dated as of December 15, 1925; and further that this defendant has been operating the properties of defendant Pan American Petroleum Company under the provisions of an operating agreement, dated November 1, 1931, between this defendant, Pan American Petroleum Company and Los Angeles Midway Pipe Line Company, a wholly owned subsidiary of Pan American Petroleum Company.

III.

In answer to paragraph 10, said defendant admits that an actual controversy exists between the plaintiff herein, this defendant and defendant Pan American Petroleum Company in the matter set forth in paragraph 10, in that

A. This defendant contends that the said Appraisal Amendment applies to a public judicial sale as well as to a private sale of any and all of the Pan American Petroleum Company assets, whether real estate, interests in land or personal property within the jurisdiction of this Court, and elsewhere, involved in said Consolidated Foreclosure Cause, or said Constituent Cause, No. W-102-J, or otherwise; that said Appraisal Amendment requires the appointment by this Court of appraisers to appraise any and all assets of said Pan American Petroleum Company prior to the date of sale of said assets and, in all events, prior to the date of confirmation of said sale; that said Appraisal Amendment requires that such sale should not be confirmed, even though otherwise fair and equitable, unless its provisions shall first have been complied with, and in support of this, this defendant further contends that:

1. Said Appraisal Amendment applies to public as well as private sales of real estate and interests in land in said judicial sales;

2. Said Appraisal Amendment applies to public sales of personal property in judicial proceedings unless, as provided in Section 848 of the United States Judicial Code, in the opinion of the Court rendering such order or decree of sale, it would be best to sell such personal property in some other manner;

3. Said Appraisal Amendment applies to sales, both public and private in judicial proceedings even though real estate and interests in land are intermingled with personal property and both are operated together as an integral unit of a going industrial concern, such as is the case of Pan American Petroleum Company;

4. Said Appraisal Amendment applies to public sales in judicial proceedings even though said judicial proceedings were instituted prior to June 19, 1934, by creditors to enforce obligations incurred prior to said date and applies to foreclosure proceedings instituted prior to said date to foreclose a mortgage executed prior to said date to secure obligations validly incurred and outstanding prior to said date of the enactment of said Appraisal Amendment;

B. This defendant contends that the Appraisal Amendment requires the appointment of appraisers and the appraisal prior to the time of sale and not alone prior to confirmation of sale, for to hold otherwise would make possible a situation where all proceedings for a judicial sale, which are normally quite costly, might be rendered useless, if the price bid at the sale did not exceed two-thirds of the appraised value found by three disinterested appraisers and further contends that the Court should construe the Appraisal Amendment so as to eliminate the possibility of such wasteful proceedings.

C. This defendant contends that the Appraisal Amendment is applicable to judicial sales in the Consolidated Foreclosure Cause and in said constituent Causes thereof, of any and all Pan American Petroleum Company assets, in so far as they consist of personal property unless, as provided in Section 848, in the opinion of the Court

rendering such order or decree, it would be best to sell said personal property in some other manner, and this defendant alleges that the Court having jurisdiction of said Consolidated Foreclosure Cause and said Constituent Cause No. W-102-J, has not made or entered any such order;

D. This defendant contends that the Appraisal Amendment is constitutional and denies that if the Appraisal Amendment applies to public judicial sales of real estate or interests in land or other property of Pan American Petroleum Company to be sold in said Consolidated Foreclosure Cause or said constituent causes thereof, all of which were instituted prior to June 19, 1934, the date of the enactment of said Appraisal Amendment, it is unconstitutional or void; denies further that said Appraisal Amendment is void or unconstitutional as depriving the plaintiff of property without due process or otherwise; denies that the Appraisal Amendment materially or adversely or arbitrarily or illegally or otherwise affects or substantially impairs either the substantial or the remedial rights of the plaintiff herein.

E. This defendant admits paragraph E of paragraph 10.

F. This defendant alleges that said Section 847 and Section 848 require the appraisal of the property of Pan American Petroleum Company by three distinterested persons upon the basis of a going concern having in mind the financial returns which may be obtained from said property from the uses to which it is being employed or may be employed.

WHEREFORE, defendant William C. McDuffie, as Receiver of Richfield Oil Company of California, prays that a declaratory judgment be made and entered herein by this Court adjudging and decreeing:

1. That the Appraisal Amendment applies to a public judicial sale of any and all of the Pan American Petroleum Company assets within the jurisdiction of this Court, whether constituting personal property or real estate or interests in land, to be held in said Consolidated Foreclosure Cause and said Constituent Causes thereof, and that said Appraisal Amendment requires the appointment by this Court of appraisers to appraise any and all of such assets before the date of the sale thereof and that such sale, if determined by this Court otherwise to be fair and equitable should be confirmed only upon compliance with the provisions of said Appraisal Amendment.

2. The meaning of the term "appraised value" in the Appraisal Amendment and the basis upon which such value should be determined by such appraisers.

3. That the Appraisal Amendment as applied to the sale of real estate or interests in land and other assets of Pan American Petroleum Company sold at judicial sale in said Consolidated Foreclosure Cause and said Constituent Causes thereof, is constitutional;

and further prays that the Defendant may have judgment for its costs and expenses of suit.

DATED: Los Angeles, California, October 23, 1934.

GIBSON, DUNN & CRUTCHER

BY Homer D. Crotty

Solicitors for William C. McDuffie, as Receiver of RICHFIELD OIL COMPANY OF CALIFORNIA.

United States of America)
 Southern District of California) SS.
 County of Los Angeles)
 State of California)

WM. C. McDUFFIE, being by me first duly sworn, deposes and says: That as Receiver of Richfield Oil Company of California he is one of the defendants in the above entitled action; that he has read the foregoing answer and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

Wm. C. McDuffie

SUBSCRIBED and SWORN to before me this 23rd day of October, 1934.

[Seal]

H. R. Leonard

NOTARY PUBLIC in and for the County of Los Angeles, State of California.

My Commission expires March 30, 1935.

[Endorsed]: Received copy of within answer this 23 day of Oct. 1934. Mudge, Stern, Williams & Tucker and Freston & Files By Clarence M. Hanson Solicitors for Plaintiff Filed Oct. 24, 1934.

[TITLE OF COURT AND CAUSE.]

ANSWER OF DEFENDANT PAN AMERICAN
PETROLEUM COMPANY.

To the Honorable, the Judges of the District Court of
the United States, for the Southern District of
California, Central Division:

The defendant, PAN AMERICAN PETROLEUM
COMPANY, in answer to the Bill of Complaint, on file
herein,

I.

Admits all of the allegations contained in paragraphs
1 to 9 inclusive, and the first paragraph and the sub-para-
graphs 1, 2, 3, 5 and 7 of paragraph 11 and the first para-
graph of paragraph 12.

II.

In answer to paragraph 10, said defendant admits that
an actual controversy exists between the plaintiff herein,
this defendant and defendant William C. McDuffie, as
Receiver of Richfield Oil Company of California in the
matter set forth in paragraph 10, in that

A. This defendant contends that the said Appraisal
Amendment applies to a public judicial sale as well as to a
private sale of any and all of the Pan American Petro-
leum Company assets, whether real estate, interests in
land or personal property within the jurisdiction of this
Court, and elsewhere, involved in said Consolidated Fore-
closure Cause, or said Constituent Cause, No. W-102-J,

or otherwise; that said Appraisal Amendment requires the appointment by this Court of appraisers to appraise any and all assets of said Pan American Petroleum Company prior to the date of sale of said assets and, in all events, prior to the date of confirmation of said sale; that said Appraisal Amendment requires that such sale should not be confirmed, even though otherwise fair and equitable, unless its provisions shall first have been complied with, and in support of this Defendant further contends that:

1. Said Appraisal Amendment applies to public as well as private sales of real estate and interests in land in said judicial sales;

2. Said Appraisal Amendment applies to public sales of personal property in judicial proceedings, unless, as provided in Section 848 of the United States Judicial Code, in the opinion of the Court rendering such order or decree of sale, it would be best to sell such personal property in some other manner;

3. Said Appraisal Amendment applies to sales, both public and private, in judicial proceedings even though real estate and interests in land are intermingled with personal property and both are operated together as an integral unit of a going industrial concern, such as is the case of Pan American Petroleum Company;

4. Said Appraisal Amendment applies to public sales in judicial proceedings even though said judicial proceedings were instituted prior to June 19, 1934, by creditors

to enforce obligations incurred prior to said date and applies to foreclosure proceedings instituted prior to said date to foreclose a mortgage executed prior to said date to secure obligations validly incurred and outstanding prior to said date of the enactment of said Appraisal Amendment.

B. This defendant contends that the Appraisal Amendment requires the appointment of appraisers and the appraisal prior to the time of sale and not alone prior to confirmation of sale, for to hold otherwise would make possible a situation where all proceedings for a judicial sale, which are normally quite costly, might be rendered useless, if the price bid at the sale did not exceed two-thirds of the appraised value found by three disinterested appraisers, and further contends that the Court should construe the Appraisal Amendment so as to eliminate the possibility of such wasteful proceedings.

C. This defendant contends that the Appraisal Amendment is applicable to judicial sales in the Consolidated Foreclosure Cause and in said constituent causes thereof, of any and all Pan American Petroleum Company assets, in so far as they consist of personal property unless, as provided in Section 848, in the opinion of the Court rendering such order or decree, it would be best to sell said personal property in some other manner, and this defendant alleges that the Court having jurisdiction of said Consolidated Foreclosure Cause and said constituent cause, No. W-102-J, has not made or entered any such order :

D. This defendant contends that the Appraisal Amendment is constitutional and denies that if the Appraisal Amendment applies to public judicial sales of real estate or interests in land or other property of Pan American Petroleum Company to be sold in said Consolidated Foreclosure Cause or said constituent causes thereof, all of which were instituted prior to June 19, 1934, the date of the enactment of said Appraisal Amendment, it is unconstitutional or void; denies further that said Appraisal Amendment is void or unconstitutional as depriving the plaintiff of property without due process or otherwise; denies that the Appraisal Amendment materially or adversely or arbitrarily or illegally or otherwise affects or substantially impairs either the substantial or the remedial rights of the plaintiff herein;

E. This defendant admits paragraph E of paragraph 10;

F. This defendant alleges that said Section 847 and Section 848 require the appraisal of the property of Pan American Petroleum Company to three disinterested persons upon the basis of a going concern having in mind the financial returns which may be obtained from said property from the uses to which it is being employed or may be employed.

WHEREFORE, defendant Pan American Petroleum Company, prays that a declaratory judgment be made and entered herein by this Court adjudging and decreeing:

1. That the Appraisal Amendment applies to a public judicial sale of any and all of the Pan American Petroleum Company assets within the jurisdiction of this Court, whether constituting personal property or real estate or interests in land, to be held in said Consolidated Foreclosure Cause and said constituent causes thereof, and that said Appraisal Amendment requires the appointment by this Court of appraisers to appraise any and all of such assets before the date of the sale thereof and that such sale, if determined by this Court otherwise to be fair and equitable, should be confirmed only upon compliance with the provisions of said Appraisal Amendment.

2. The meaning of the term "appraised value" in the Appraisal Amendment and the basis upon which such value should be determined by such appraisers.

3. That the Appraisal Amendment as applied to the sale of real estate or interests in land and other assets of Pan American Petroleum Company sold at judicial sale in said Consolidated Foreclosure Cause and said constituent causes thereof, is constitutional; and further prays that this Defendant may have judgment for its costs and expenses of suit.

DATED: Los Angeles, California, October 23, 1934.

Clayton T Cochran

Solicitor for Pan American Petroleum Company.

STATE OF CALIFORNIA)
 : ss.
 COUNTY OF LOS ANGELES)

J. S. WALLACE, being by me first duly sworn, deposes and says: that he is an officer, to-wit, Vice President of Pan American Petroleum Company, one of the defendants in the above entitled action; that he has read the foregoing answer and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon information or belief, and as to those matters that he believes it to be true.

J. S. Wallace D. J. E.

SUBSCRIBED and SWORN to before me this 23rd day of October, 1934.

[Seal]

H. R. Leonard

NOTARY PUBLIC in and for the County of Los Angeles, State of California.

My Commission expires 3/30/35

[Endorsed]: Received copy of within answer this 23 day of Oct. 1934 Mudge, Stern, Williams & Tucker and Freston & Files By Clarence M. Hanson Solicitors for Plaintiff. Filed Oct 24, 1934.

[TITLE OF COURT AND CAUSE.]

ANSWER OF WILLIAM C. McDUFFIE as Receiver
of PAN AMERICAN PETROLEUM COMPANY.

To the Honorable, the Judges of the District Court of
the United States, for the Southern District of Cali-
fornia, Central Division:

The defendant, WILLIAM C. McDUFFIE, as Re-
ceiver of PAN AMERICAN PETROLEUM COM-
PANY, in answer to the Bill of Complaint on file herein,
admits all matters of fact alleged in said Complaint.

WHEREFORE, defendant prays that a declaratory
judgment be made and entered by this Court adjudicat-
ing the controversies between the plaintiff and other par-
ties to this cause as speedily as possible.

DATED: Los Angeles, California, October 22, 1934.

GIBSON, DUNN & CRUTCHER

BY Homer D. Crotty

Solicitors for William C. McDuffie, as Receiver of Pan
American Petroleum Company.

United States of America)
 Southern District of California)
 County of Los Angeles) SS.
 State of California)

WM. C. McDUFFIE, being by me first duly sworn, deposes and says: That as Receiver of Pan American Petroleum Company he is one of the defendants in the above entitled action; that he has read the foregoing answer and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

Wm. C. McDuffie

SUBSCRIBED and SWORN to before me this 22nd day of October, 1934.

[Seal]

H. R. Leonard

NOTARY PUBLIC in and for the County of Los Angeles, State of California.

My Commission expires March 30, 1935.

[Endorsed]: Received copy of the within answer this 23rd day of Oct. 1934 Freston & Files and Mudge, Stern, Williams & Tucker By Clarence M. Hanson, solicitors for plaintiff Filed Oct 24, 1934.

[TITLE OF COURT AND CAUSE.]

NOTICE OF MOTION TO STRIKE FROM
COMPLAINT

TO THE CHASE NATIONAL BANK OF THE CITY
OF NEW YORK, Plaintiff and to JOSEPH V.
KLINE and CLARENCE M. HANSON, its so-
licitors:

YOU AND EACH OF YOU WILL PLEASE TAKE
NOTICE that the defendant, William C. McDuffie, as
Receiver of Richfield Oil Company of California will on
Monday the 29th day of October, 1934, at 10:00 A. M.,
or as soon thereafter as counsel can be heard, in the
Court Room of the above entitled Court presided over
by the Honorable Wm. P. James in the Federal Building
in the City of Los Angeles, State of California, move
to strike from said Complaint the various portions thereof
specifically set forth in the Motion, a copy of which is
hereto attached.

Said Motion will be made upon the grounds that the
portions of said Complaint specified in said Motion are
impertinent, incompetent, irrelevant, immaterial and re-
dundant and state no facts which are material to the
controversy described in said Complaint.

Said Motion will be made upon the grounds aforesaid
and upon all the pleadings and papers in this case and

upon the basis of the Points and Authorities, a copy of which is hereto attached.

DATED: Los Angeles, California, October 23, 1934.

GIBSON, DUNN & CRUTCHER

By Homer D. Crotty

Solicitors for Defendant William C. McDuffie,
as Receiver of Richfield Oil Company of
California.

David P. Evans

Of Counsel

[Endorsed]: Received copy of the within notice this
23 day of Oct. 1934 Mudge, Stern, Williams & Tucker,
and Freston & Files By Clarence M. Hanson Solicitors
for Plaintiff. Filed Oct. 24, 1934.

[TITLE OF COURT AND CAUSE.]

MOTION TO STRIKE FROM COMPLAINT

NOW COMES the defendant William C. McDuffie, as Receiver of Richfield Oil Company of California and moves the Court to strike from plaintiff's Complaint herein the following portions thereof, to-wit:

1. From line 35 on page 9 of said Complaint to and including line 6 on page 10 of said Complaint, which portions of said Complaint read as follows:

“(4) If the said sale of real estate or interests in land and other assets of Pan American is held in said Consolidated Foreclosure Cause and in said constituent causes after the appointment of appraisers and an appraisal of such real estate or interest in land or other property before the sale thereof, the bidding will be chilled for the following reason:

“The combined properties of Richfield and Pan American, exclusive of certain intangibles, were appraised as of January 15, 1931, by engineers retained by the Receiver on a going concern basis, at approximately \$69,000,000, and on a forced sale basis at approximately \$24,000,000. If the appraisers appointed by the Court should again appraise the properties at \$69,000,000, the properties involved would have to be purchased at the said judicial sale for two-thirds of that amount, namely, for \$46,000,000, if the Appraisal Amendment is applicable, or the sale would not be confirmed. Many prospective purchasers might be able, willing, and anxious to bid less than \$46,000,000 for the property but would be deterred from bidding by reason of such appraisal of \$69,000,000

and similarly the bidding would be chilled if the property should be appraised at any other particular amount by eliminating possible bidders who would desire to bid less than two-thirds of said appraised amount. If it should be determined, after such appraisal had been had that the Appraisal Statute were inapplicable, the loss to the bondholders, creditors, and the Government of the United States would be irreparable on account of such chilling of the bidding at said judicial sale.”

2. From line 22 on page 10 of said complaint to and including line 40 on page 10 of said Complaint, which portions of said Complaint read as follows:

“(6) That in view of the appraisal made by engineers retained by the Receivers of the Richfield and Pan American properties at approximately \$69,000,000, as aforesaid (which, if again appraised at said amount, would require a bid of \$46,000,000 in order to have the sale confirmed) and in view of the fact that after prolonging negotiations for the sale of these properties by committees representing various classes of creditors and bondholders of Pan American and Richfield, and after wide publicity of the fact that these properties are for sale, no firm offers have been received from any prospective purchasers to the knowledge of plaintiff except for amounts many million dollars less than \$46,000,000, it seems probable that no foreclosure sale of the mortgaged property or no judicial sale of the other properties of Pan American could be consummated; and in that case the receivership of Pan American and Richfield would be continued indefinitely and the bondholders, creditors, and the Government would be delayed in recovering upon their claims, and large costs in

advertising and holding such sale would have been needlessly incurred.”

3. From line 24 on page 11 of said Complaint to and including line 31 on page 11 of said Complaint, which portions of said Complaint read as follows:

“The plaintiff is informed and believes and therefore alleges that the holding of an appraisal in said Consolidated Foreclosure Cause and said constituent causes will cause unnecessary delay and expense and cause great loss to the Government which is not receiving interest on its claim under the terms of the aforesaid stipulation, which was made, entered into and approved with the expectation that there would be an early sale of the assets in said Consolidated Foreclosure Cause and said constituent causes.”

Said Motion is made upon the grounds that the words and figures contained in portions of said Complaint hereinabove set forth, and all thereof, are impertinent, incompetent, irrelevant, immaterial and redundant and state no facts which are material to the controversy alleged in said Complaint.

The foregoing Motion is based upon the grounds stated and upon all the pleadings and papers on file in this cause.

DATED: October 23, 1934.

GIBSON, DUNN & CRUTCHER,

By Homer D. Crotty

Solicitors for Defendant William C. McDuffie,
as Receiver of Richfield Oil Company of
California.

David P. Evans
Of Counsel

MEMORANDUM OF POINTS AND AUTHORITIES
 IN SUPPORT OF MOTION TO STRIKE FROM
 COMPLAINT

I.

Impertinent, irrelevant and redundant allegations may be stricken on Motion.

Equity Rule 21

Larco vs. Casaneuava, 30 Cal. 561, 565

McCaughey vs. Schuette, 117 Cal. 223, 225

GIBSON, DUNN & CRUTCHER

By Homer D. Crotty

Solicitors for Defendant, William C. McDuffie,
 as Receiver of Richfield Oil Company of
 California

David P. Evans

Of Counsel

[Endorsed]: Received copy of the within motion this 23 day of Oct. 1934 Mudge, Stern, Williams & Tucker, and Freston & Files By Clarence M. Hanson, Solicitors for Plaintiff. Filed Oct 24, 1934.

[TITLE OF COURT AND CAUSE.]

NOTICE OF MOTION TO STRIKE FROM
COMPLAINT

TO THE CHASE NATIONAL BANK OF THE CITY
OF NEW YORK, Plaintiff and to JOSEPH V.
KLINE and CLARENCE M. HANSON, its so-
licitors:

YOU AND EACH OF YOU WILL PLEASE
TAKE NOTICE that the defendant Pan American Pe-
troleum Company will on Monday the 29th day of Octo-
ber, 1934, at 10:00 A. M., or as soon thereafter as coun-
sel can be heard, in the Court Room of the above entitled
Court presided over by the Honorable Wm. P. James
in the Federal Building in the City of Los Angeles, State
of California, move to strike from said Complaint the
various portions thereof specifically set forth in the
Motion, a copy of which is hereto attached.

Said Motion will be made upon the grounds that the
portions of said Complaint specified in said Motion are
impertinent, incompetent, irrelevant, immaterial and re-
dundant and state no facts which are material to the
controversy described in said Complaint.

Said Motion will be made upon the grounds aforesaid and upon all the pleadings and papers in this case and upon the basis of the Points and Authorities, a copy of which is hereto attached.

DATED: Los Angeles, California, October 23, 1934.

Clayton T. Cochran

Solicitor for Defendant Pan American
Petroleum Company

[Endorsed]: Received copy of within notice this 23 of Oct. 1934 Mudge, Stern, Williams & Tucker Freston & Files By Clarence M. Hanson Solicitors for Plaintiff. Filed Oct 24, 1934.

[TITLE OF COURT AND CAUSE.]

MOTION TO STRIKE FROM COMPLAINT

NOW COMES the defendant Pan American Petroleum Company and moves the Court to strike from plaintiff's Complaint herein the following portions thereof, to-wit:

1. From line 35 on page 9 of said Complaint to and including line 6 on page 10 of said Complaint, which portions of said Complaint read as follows:

“(4) If the said sale of real estate or interests in land and other assets of Pan American is held in said Consolidated Foreclosure Cause and in said constituent causes after the appointment of appraisers and an appraisal of such real estate or interest in land or other property before the sale thereof, the bidding will be chilled for the following reason:

“The combined properties of Richfield and Pan American, exclusive of certain intangibles, were appraised as of January 15, 1931, by engineers retained by the Receiver on a going concern basis at approximately \$69,000,000, and on a forced sale basis at approximately \$24,000,000. If the appraisers appointed by the Court should again appraise the properties at \$69,000,000, the properties involved would have to be purchased at the said judicial sale for two-thirds of that amount, namely, for \$46,000,000, if the Appraisal Amendment is applicable, or the sale would not be confirmed. Many prospective pur-

chasers might be able, willing and anxious to bid less than \$46,000,000 for the property but would be deterred from bidding by reason of such appraisal of \$69,000,000 and similarly the bidding would be chilled if the property should be appraised at any other particular amount by eliminating possible bidders who would desire to bid less than two-thirds of said appraised amount. If it should be determined, after such appraisal had been had that the Appraisal Statute were inapplicable, the loss to the bondholders, creditors, and the Government of the United States would be irreparable on account of such chilling of the bidding at said judicial sale.”

2. From line 22 on page 10 of said Complaint to and including line 40 on page 10 of said Complaint, which portions of said Complaint read as follows:

“(6) That in view of the appraisal made by engineers retained by the Receivers of the Richfield and Pan American properties at approximately \$69,000,000, as aforesaid (which, if again appraised at said amount, would require a bid of \$46,000,000 in order to have the sale confirmed) and in view of the fact that after prolonging negotiations for the sale of these properties by committees representing various classes of creditors and bondholders of Pan American and Richfield, and after wide publicity of the fact that these properties are for sale, no firm offers have been received from any prospective purchasers to the knowledge of plaintiff except for amounts many million dollars less than \$46,000,000, it seems probable that no fore-

closure sale of the mortgaged property or no judicial sale of the other properties of Pan American could be consummated; and in that case the receivership of Pan American and Richfield would be continued indefinitely and the bondholders, creditors, and the Government would be delayed in recovering upon their claims, and large costs in advertising and holding such sale would have been needlessly incurred."

3. From line 24 on page 11 of said Complaint to and including line 31 on page 11 of said Complaint, which portions of said Complaint read as follows:

"The plaintiff is informed and believes and therefore alleges that the holding of an appraisal in said Consolidated Foreclosure Cause and said constituent causes will cause unnecessary delay and expense and cause great loss to the Government which is not receiving interest on its claim under the terms of the aforesaid stipulation, which was made, entered into and approved with the expectation that there would be an early sale of the assets in said Consolidated Foreclosure Cause and said constituent causes."

Said Motion is made upon the grounds that the words and figures contained in portions of said Complaint hereinabove set forth, and all thereof, are impertinent, incompetent, irrelevant, immaterial and redundant and state no facts which are material to the controversy alleged in said Complaint.

The foregoing Motion is based upon the grounds stated and upon all the pleadings and papers on file in this cause.

DATED: October 23, 1934.

Clayton T. Cochran
Solicitor for Defendant Pan American
Petroleum Company

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION TO STRIKE FROM
COMPLAINT

I.

Impertinent, irrelevant and redundant allegations may be stricken on Motion.

Equity Rule 21

Larco vs. Casaneuava, 30 Cal. 561, 565

McCaughey vs. Schuette, 117 Cal., 223, 225

Clayton T. Cochran
Solicitor for Defendant, Pan American
Petroleum Company

[Endorsed]: Received copy of the within motion this 23 of Oct., 1934 Mudge, Stern, Williams & Tucker and Freston & Files By Clarence M. Hanson Solicitors for Plaintiff. Filed Oct 24, 1934.

[TITLE OF COURT AND CAUSE.]

No. Eq-419-J.

Pursuant to the stipulation attached hereto, IT IS ORDERED that the motions of Pan American Petroleum Co. and William C. McDuffie, receiver of Richfield Oil Company to strike certain portions of the complaint of plaintiff are submitted for decision.

Dated November 2, 1934.

Wm. P. James

U. S. District Judge.

November 1, 1934

Honorable William P. James
Federal Building
Temple and Main Streets
Los Angeles California

Dear Sir:

RE: CHASE NATIONAL BANK OF THE CITY
OF NEW YORK vs. PAN AMERICAN PE-
TROLEUM CO., et al. In Equity No. 419-J

Confirming the conversation between yourself, Mr. Hanson and Mr. Crotty, it is hereby stipulated that the Motions to Strike certain portions of the Complaint of The Chase National Bank of the City of New York, filed

by Pan American Petroleum Company and William C. McDuffie, as Receiver of Richfield Oil Company of California, may be submitted without argument.

Very truly yours,

GIBSON, DUNN & CRUTCHER

By Homer D. Crotty

Solicitors for William C. McDuffie, as Receiver of Richfield Oil Company of California and for William C. McDuffie, as Receiver of Pan American Petroleum Company.

MUDGE, STERN, WILLIAMS & TUCKER
FREESTON & FILES

By Clarence M. Hanson

Solicitors for The Chase National Bank of the City of New York.

Clayton T. Cochran

Solicitor for Pan American Petroleum Company.

[Endorsed]: Filed Nov. 2, 1934.

[TITLE OF COURT AND CAUSE.]

ORDER.

In this suit for declaratory relief the court, on the 31st of December, 1934, made its order directing judgment to be entered in accordance with the conclusions expressed in said order, with the understanding that several counsel had in their oral statements to the court intended that the issues involved should be submitted to the court upon the complaint and answers filed, notwithstanding that motions to strike had been interposed on behalf of the defendants. The court now being advised that such was not the intent of the stipulation, orders that the order of court as made on the 31st day of December, 1934, be and it is vacated and set aside. The court now orders that the motion of William C. McDuffie, as Receiver of Pan American Petroleum Company and of Richfield Oil Company of California, and the motion of Pan American Petroleum Company to strike from the complaint of plaintiff certain portions thereof, be and they are denied. An exception is noted in favor of the moving defendants. Further action of the court will await such stipulation as the parties may desire to make respecting the submission of the cause on the complaint and answers made thereto.

Dated January 16, 1935.

Wm. P. James

U. S. District Judge.

[Endorsed]: Filed Jan. 16, 1935.

[TITLE OF COURT AND CAUSE.]

NOTICE OF MOTION FOR JUDGMENT

TO THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, Plaintiff and to JOSEPH V. KLINE and CLARENCE M. HANSON, its solicitors:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the defendants William C. McDuffie, as Receiver of Richfield Oil Company of California and Pan American Petroleum Company will on Monday the 21st day of January 1935, at 10:00 A. M., or as soon thereafter as the counsel can be heard, in the Court Room of the above entitled Court presided over by the Honorable Wm. P. James in the Federal Building in the City of Los Angeles, State of California, move for judgment on the Pleadings on file herein.

Said Motion will be based upon the Complaint for Declaratory Judgment on file herein and upon the Answers of defendants William C. McDuffie, as Receiver of Richfield Oil Company of California and Pan American Petroleum Company, and upon the basis of the Points

and Authorities set forth in the Brief of said defendants on file herein.

DATED: Los Angeles, California, January 18th, 1935.

GIBSON, DUNN & CRUTCHER

By Homer D Crotty

Solicitors for Defendant William C. McDuffie, as
Receiver of Richfield Oil Company of California.

Clayton T. Cochran

Solicitor for defendant Pan American Petroleum
Company

Notice Accepted and consent given to hearing on Jan.
21, 1934

Joseph V. Kline and
Clarence M. Hanson,

solicitors for plaintiff.

[Endorsed]: Filed Jan. 18, 1935.

[TITLE OF COURT AND CAUSE.]

MOTION FOR JUDGMENT

NOW COME the defendants William C. McDuffie, as Receiver of Richfield Oil Company of California and Pan American Petroleum Company and move the Court that judgment be made and entered herein, in favor of these defendants and that it be adjudged and decreed:

1. That the Act of Congress of March 3, 1893, as amended by the Act of Congress of June 19, 1934 (being title 28 Section 847 of the United States Code), said amendment of June 19, 1934, being hereinafter referred to as the "Appraisal Amendment", applies to a public judicial sale of any and all of the Pan American Petroleum Company assets within the jurisdiction of this Court, whether constituting personal property or real estate or interests in land, and that said Appraisal Amendment requires the appointment by this Court of appraisers to appraise all of such assets before the date of the sale thereof and that such sale of said assets, even if determined by this Court to be otherwise fair and equitable, may validly be confirmed only in the event the provisions of said "Appraisal Amendment" are complied with prior to such sale.

2. That the meaning of the term "appraised value" in said Appraisal Amendment is the value of the assets to be sold considered as a "going concern" with a view to the financial returns which might be obtained from the prop-

erty through the uses to which it is being devoted or to which it may be devoted.

3. That the Appraisal Amendment is constitutional as applied to the sale of real estate or interests in land and other assets of Pan American Petroleum Company sold at judicial sale in the Consolidated Foreclosure Causes and in the Constituent Causes, described and referred to in the Pleadings herein.

The foregoing Motion is based upon the plaintiff's Complaint for Declaratory Judgment on file herein and the Answers of these defendants on file herein, and upon the Points and Authorities set forth in the Brief of these defendants on file herein.

DATED: Los Angeles, California, January 18, 1935.

GIBSON, DUNN & CRUTCHER

By Homer D. Crotty

Solicitors for defendant William C. McDuffie, as
Receiver of Richfield Oil Company of California.

Clayton T. Cochran

Solicitor for defendant Pan American Petroleum
Company

[Endorsed]: Filed Jan. 18, 1935.

At a stated term, to wit: The September Term, A. D. 1934, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, California, on Friday, the 25th day of January, in the year of our Lord one thousand nine hundred and thirty-five.

Present:

The Honorable: WM. P. JAMES, District Judge.

The Chase National Bank of the City of)		
New York,	Plaintiff,)	
	vs.	) No. Eq.-419-J.
)
Pan American Petroleum Company et al.,)		
	Defendants.)	

The Motion of defendants Wm. C. McDuffie, as Receiver of the Richfield Oil Company of California, and Pan American Petroleum Company, that judgment be made and entered herein in favor of these defendants, pursuant to Notice and Motion filed January 18th, 1935, having been brought on for hearing pursuant to said Notice to the plaintiff, and at the time of the hearing of said Motion the plaintiff presented orally its Motion to submit the cause on the Bill of Complaint and the Answers as filed; and it was stipulated by counsel in open court that both Motions might be deemed submitted to

the Court for decision, and it was so ordered. It was first indicated by counsel that a written order would be presented in that behalf, but respective counsel later waived presentation of such written order and consented to the submission as orally agreed upon in open court. It is now ordered that said both Motions be and they are submitted to the Court for decision.

The Court having duly considered the said Motions, and the law, and now being fully advised, hands down and orders filed its Opinion and Order, and in accordance therewith, orders judgment in favor of the plaintiff. Exception is noted in favor of all interested parties. Filed Opinion and Order.

The said Opinion is ordered entered as the Findings of Fact and Conclusions of Law required under Equity Rule 70½.

A Decree in favor of the plaintiff, signed by the Court on January 24, 1935, is now ordered filed and entered herein; said Opinion and Order, and Decree, as filed, being as follows, to-wit:

matters of fact alleged by the plaintiff. Defendant McDuffie as Receiver of Richfield Oil Company, together with defendant Pan American Petroleum Company, brought on for hearing after due notice to the plaintiff, their motion for judgment on the pleadings. At the time of the hearing of said motion the plaintiff presented orally its motion to submit the cause on the bill of complaint and the answers as filed. It was stipulated by counsel in open court that both motions might be deemed submitted to the court for decision, and the order was so made. It was first indicated by counsel that a written order would be presented in that behalf, but respective counsel later waived presentation of such written order and consented to the submission as orally agreed upon in open court. IT IS NOW ORDERED that both motions as above described be and they are submitted to the court for decision.

Upon the admitted facts, it is made plain that there is a present, actual controversy between the plaintiff and the defendants in the meaning of the statute authorizing the proceeding for declaratory relief, and that a declaratory judgment is necessary to be made, otherwise there is danger of irreparable losses and delays to the parties to the controversy with respect to the receivership proceedings pending in court and described in plaintiff's complaint. Reference is here made to the facts as pleaded, and it will be unnecessary to include a detailed statement of such facts in this opinion. In that behalf it is ordered that this opinion, as expressing the findings and conclusions of the court, considering in connection therewith the facts admitted and as expressed in the pleadings, shall constitute the findings of the court in this matter.

The point in question is whether by the amendment to Section 847, Title 28, U. S. C., adopted by Congress and approved on June 19, 1934, property sold at public sale under order or decree of a United States Court, must have returned a sum not less than two-thirds of the value as shown by an appraisement made by three appraisers appointed by the court,—regardless of whether the property is real or personal.

Prior to the amendment, Section 847 (applying to real property) read as follows:

847. Sales; real property under order or decree. All real estate or any interest in land sold under any order or decree of any United States court shall be sold at public sale at the courthouse of the county, parish, or city in which the property, or the greater part thereof, is located, or upon the premises as the court rendering such order or decree of sale may direct.

Section 848, following, provided that court sales of personal property should be under the same procedure unless “in the opinion of the court rendering such order or decree, it would be best to sell it in some other manner.”

Prospective sales of both Pan American and Richfield properties to satisfy bonded debts are under consideration, foreclosure proceedings having been instituted. The question presented is of vital moment in both proceedings.

Section 847, as it is now in force, with the amendatory provision, is as follows:

“All real estate or any interest in land sold under any order or decree of any United States court shall be sold at public sale at the courthouse of the county, parish, or city

in which the property, or the greater part thereof, is located, or upon the premises, as the court rendering such order or decree of sale may direct: Provided, however, That the court may, upon petition therefor and a hearing thereon after such notice to parties in interest as said court shall direct, if it find that the best interests of said estate will be conserved thereby, order and decree the sale of such real estate or interest in land at private sale: Provided, further, That the court shall appoint three disinterested persons to appraise said property, and said sale shall not be confirmed for less than two-thirds of the appraised value.

Does the final clause, providing for the appointment of appraisers, and denying the right of the court to approve the sale unless the bid amounts to two-thirds of the appraised value, affect public and private sales alike, or only private sales?

The petitioner asserts that where public sales are made such is not the requirement. It is further asserted that if such is the requirement, the amendatory provisions are unconstitutional as to it, as depriving the bondholders of a vested right which had accrued prior to the date of the amendment.

A quite elementary rule of statutory interpretation is that the true intent of Congress must be ascertained, and that that intent must prevail, unless the particular wording of the statute under consideration requires a different construction.

A careful reading of the amendment in connection with the original and unchanged wording of the statute, makes it seem that an interpretation should be adopted which agrees with the petitioner's argument. The original stat-

ute (847) is not changed in its verbiage. There is added a proviso which allows sales of property to be privately made, which had not theretofore been permitted in any case where real property was involved. The rule remains general that such sales shall be publicly held with advertised notice for not less than four weeks. If, in the amended form, at the end of the expressions of the original statute there had been placed a period instead of a colon, there would have been left no room for debate whatsoever as to the meaning intended, to-wit: distinct and separate procedure in the case of private sales. Nevertheless, the form of punctuation is not controlling to the opposite view here expressed. That Congress intended to authorize private sales under court orders to be made only under the restrictive conditions as to appraisal and confirmation of not less than two-thirds of the appraised value, leaving the general provision for public sales unaffected, seems fairly apparent. Why should it have been considered that the procedure outlined and established for public sales of property, with wide and general advertisements as to time and place of sale, needed any further added restrictive conditions? The legislatures of the states have generally determined that public advertised judicial sales are designed to best prevent unfair advantage to be taken by the creditors as against the debtor. Exceptional cases, depending upon the class of property involved, and the dearth of bidders in the particular market, suggest that the canvassing of the interested public, using time and effort in solicitation of offers, may produce better results. In such cases, while private sales are authorized, Congress determined that there should be some cautionary limitation, which would prevent

perhaps only a nominal price to be returned and approved. Hence the conditions that there should be a fair appraisal made and not less than two-thirds of the appraised price accepted and confirmed.

What has been stated demonstrates, I think, that at best there is here present a subject for scant debate as to what Congress intended by its amendment to Section 847. In such cases courts may resort to the records of the Congress, particularly the reports of its committees, in ascertaining the true intent of the law. By reference to such reports we find that the only subject contemplated to be covered by the amendatory provisions, was the private as distinguished from the public sale of property under control of the court.

In Report No. 818, headed "Private Sale of Real Estate," Senator Stephens of the Committee on Judiciary of the Senate, submitted a recommendation for the passage of the bill embodying the amendment, with the statement: "A sufficient explanation of this proposed legislation is contained in the following excerpt from House Report No. 978, which accompanied the Bill in the House of Representatives." The matter referred to as contained in the House Report showed that the amendatory bill in its original form contained no condition as to appraisal of property. This was added by the House Committee amendment. The House Report, referred to by Senator Stephens of the Senate Judiciary Committee, was as follows:

The purpose of this bill is to amend the existing law so as to permit the private sale of real estate under the Federal equity jurisdiction. Under the existing law there is no such right. Experience has shown that a private

sale can be effected more advantageously than a public one, particularly in equitable receiverships where the property is apt to be sacrificed. A person who wishes to buy will not make a genuine bid unless there is competition, when he may be compelled to pay a reasonable price. There is frequently no such competition and, as a result, the property is sacrificed at public sale. A private sale would give an opportunity for negotiation in which a fair price can probably be obtained.

Your committee has amended the bill in order further to protect the property by providing that the court shall appoint three disinterested persons to appraise the property and that the sale shall not be confirmed for less than two thirds of its appraised value.

It seems most clear from this that there was no intent of Congress to have applied to public advertised sales of property made under judicial order or decree, the restrictive provisions contained in the amendment. That the whole purpose and intent was, for the first time to allow private sales to be made of real property under conditions as stated, appears without room for substantial question. The language of the amendment, and its relation to the original text makes this conclusion logical; the report of the Senate Committee confirms it.

The plaintiff petitioner will have judgment accordingly. In view of the conclusions stated, it will be unnecessary to determine the Constitutional question presented. An exception will be noted in favor of all interested parties.

Dated this 24th day of January, 1935.

Wm. P. James

U. S. District Judge.

[Endorsed]: Filed Jan. 25, 1935.

At a Term of the United States District Court for the Southern District of California, Central Division, in the Ninth Judicial Circuit held in the City of Los Angeles, State of California, on the 24th day of January, 1935.

PRESENT:

Honorable Wm. P. James, Judge.

_____)		
THE CHASE NATIONAL BANK)		
OF THE CITY OF NEW YORK,)		
)		
Plaintiff,)		
-against-)	
)	IN EQUITY	
PAN AMERICAN PETROLEUM)	CAUSE No. 419-J	
COMPANY, WILLIAM C. Mc-)	
DUFFIE, as Receiver of Pan Amer-	)	DECREE
ican Petroleum Company, and WIL-)	
LIAM C. McDUFFIE, as Receiver)		
of Richfield Oil Company of Cali-)	
fornia,)	
Defendants.)		
_____)		

This cause came on to be further heard at this Term on a motion for judgment by the defendants, Pan American Petroleum Company (hereinafter referred to as "Pan American") and William C. McDuffie, as Receiver of Richfield Oil Company of California, on the plaintiff's Bill of Complaint for Declaratory Judgment and the Answers of the defendants, Pan American, William C. McDuffie, as Receiver of Pan American, and William C. McDuffie, as Receiver of Richfield Oil Company of California (hereinafter referred to as "Richfield"), and on

oral motion by plaintiff to submit the cause on the bill and answers, and was argued by counsel, Joseph V. Kline and Clarence M. Hanson appearing as solicitors for the plaintiff, Homer D. Crotty appearing as solicitor for the defendants, William C. McDuffie, as Receiver of Pan American and William C. McDuffie, as Receiver of Richfield, and Clayton T. Cochran appearing as solicitor for the defendant, Pan American; and thereupon, upon consideration thereof, it was ORDERED, ADJUDGED, DECREED AND DECLARED as follows:

1. That this Court has jurisdiction of all of the parties hereto and of the subject matter hereof.

2. That a present, actual and justiciable controversy exists between the plaintiff herein and the defendants Pan American and William C. McDuffie, as Receiver of Richfield with regard to the interpretation and the applicability of the appraisal provision of Section 847 of Title 28 of the United States Code as amended, to the public judicial sale of the assets of Pan American to be held in the Consolidated Foreclosure Cause and its constituent causes pursuant to a decree heretofore submitted and to be entered therein by this Court; that the interests of said parties in this proceeding are substantial and adverse; and that this Court has jurisdiction under the provisions of Section 274D of the Judicial Code (Section 400 of Title 28 of the United States Code) to grant a declaratory judgment as prayed for herein.

3. That to the extent that a discretion is lodged in this Court to entertain this suit this Court expressly declares that it should and it does hereby exercise that discretion and declares the rights of the parties hereto as hereinafter set forth.

4. That the provision of Section 847 of Title 28 of the United States Code, as amended, requiring the Court to appoint three (3) disinterested appraisers and prohibiting confirmation of a sale for less than two-thirds of the appraised value, applies only to private sales and does not apply to properties sold at public sale under an order or decree of this or any other United States Court regardless of whether the property to be sold is personal property, real estate or interests in land.

5. That the provision of Section 847 of Title 28 of the United States Code, as amended, requiring the Court to appoint three (3) disinterested appraisers and prohibiting the confirmation of a sale for less than two-thirds of the appraised value applies only to private sales and does not apply to the public judicial sale of any or all of the Pan American assets within the jurisdiction of this Court, whether constituting personal property, real estate or interests in land, to be held in the Consolidated Foreclosure Cause and its constituent causes pursuant to the decree now submitted and to be entered therein by this Court, and that a sale in said causes without an appraisal and at less than two-thirds of the appraised value if otherwise determined by this Court to be fair and equitable may validly be confirmed by this Court, and will be a valid sale and in all respects compliant with the provisions of Section 847 of Title 28 of the United States Code, as amended.

6. That defendants' motion for judgment be denied.

7. That the opinion given by this Court and filed this day may stand as the findings of fact and conclusions of law required under Equity Rule 70 $\frac{1}{2}$.

8. To all of which the defendants, Pan American Petroleum Company, and William C. McDuffie, as Receiver of Richfield Oil Company of California, except, and exception is hereby accordingly allowed.

Dated: January 24, 1935.

Wm P. James
United States District Judge.

Approved as to form, as required by Rule 44:

GIBSON, DUNN & CRUTCHER

By Homer D. Crotty

Solicitors for defendant William C. McDuffie, as Receiver of Pan American Petroleum Company

GIBSON, DUNN & CRUTCHER

By Homer D. Crotty

Solicitors for defendant William C. McDuffie, as Receiver of Richfield Oil Company of California.

MUDGE, STERN, WILLIAMS & TUCKER
FREESTON & FILES

By Clarence M. Hanson
Solicitors for Plaintiff

Clayton T. Cochran
Solicitor for defendant Pan American Petroleum Company

Decree entered and recorded Jan. 25 1935

R. S. ZIMMERMAN,

Clerk,

By Murray E. Wire,

Deputy Clerk.

[Endorsed]: Filed Jan. 25, 1935.

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

THE CHASE NATIONAL BANK)	
OF THE CITY OF NEW YORK,)	
)	
Plaintiff,)	
)	
vs.)	No. Eq-419-J
)	
PAN AMERICAN PETROLEUM)	PETITION
COMPANY, WILLIAM C. McDUFF-)	FOR
FIE, as Receiver of Pan American)	APPEAL
Petroleum Company, and WILLIAM)	
C. McDUFFIE, as Receiver of Rich-)	
field Oil Company of California,)	
)	
Defendants.)	

To the Honorable Wm. P. James, Judge of the United States District Court in and for the Southern District of California, Central Division:

William C. McDuffie, as Receiver of Richfield Oil Company of California and Pan American Petroleum Company, your petitioners, who are defendants in the above entitled cause, pray that they may be permitted to take an appeal from the decree entered in the above cause on the 25th day of January 1935, to the United States Cir-

cuit Court of Appeals for the Ninth Circuit for the reasons specified in the Assignment of Errors which is filed herewith, and further pray that a transcript of the records, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

Your petitioners further pray that an order be made waiving the filing by your petitioners of security on such appeal in accordance with the duly signed stipulation for the waiver thereof, which is filed herewith.

DATED this 26th day of January 1935.

GIBSON, DUNN & CRUTCHER

By Homer D. Crotty

Solicitors for Defendant William C. McDuffie, as Receiver of *Rich-* Oil Company of California.

Clayton T. Cochran

Solicitor for Pan American Petroleum Company.

David P. Evans

Of Counsel

[Endorsed]: Filed Jan. 26, 1935.

[TITLE OF COURT AND CAUSE.]

ASSIGNMENT OF ERRORS.

Come now Pan American Petroleum Company and William C. McDuffie, as Receiver of Richfield Oil Company of California, defendants in the above entitled action, and file the following Assignment of Errors upon which they are relying in the prosecution of the appeal herewith petitioned for in said cause from the decree of this Court entered on the 25th day of January, 1935;

1. The Court erred in decreeing that an appraisal as provided for in Section 847, Title 28 of the United States Code, adopted by Congress and approved June 19, 1934, of the real estate and interests in land of Pan American Petroleum Company is not a prerequisite to the valid public sale thereof and to a valid confirmation thereof.

2. The Court erred in failing to decree that Section 847, Title 28 of the United States Code adopted by Congress and approved on June 19, 1934, is valid and constitutional as applied to the sale either publicly or privately of the real estate and interests in land of Pan American Petroleum Company.

3. The Court erred in failing to decree that the appraisal required by Section 847, Title 28 of the United States Code adopted by Congress and approved June 19, 1934, should be made on the basis of a "going concern" with a view to the financial returns which might be obtained from the property being appraised through the uses to which it is being devoted or to which it may be devoted.

4. The Court erred in decreeing that the provisions of Section 847, Title 28 of the United States Code adopted

by Congress and approved June 19, 1934, did not require the Court to appoint three (3) disinterested appraisers and did not prohibit the confirmation of a sale for less than two-thirds (2/3rds) of the appraised value of any or all of the assets of Pan American Petroleum Company located within the jurisdiction of said Court, whether constituting personal property, real estate or interests in land.

WHEREFORE, these defendants pray that the said Decree may be reversed and that it be decreed that the appraisal contemplated by Section 847, Title 28 of the United States Code adopted by Congress and approved June 19, 1934, is an essential prerequisite to the valid sale and to a valid confirmation of the sale, either publicly or privately, of any of the real estate and interests in land of Pan American Petroleum Company, and that said Section 847 so adopted and approved is valid and constitutional as applied to the sale of said real estate and interests in land, and that the appraisal required by said Section 847 is an appraisal based upon the "going concern" value of the property appraised, and for such other and further relief as to the Court may seem just and proper.

DATED: January 26, 1935.

GIBSON, DUNN & CRUTCHER

By Homer D. Crotty

Solicitors for Defendant William C. McDuffie, as Receiver of Richfield Oil Company of California.

Clayton T. Cochran

Solicitor for Pan American Petroleum Company.

David P. Evans

Of Counsel

[Endorsed]: Filed Jan. 26, 1935.

[TITLE OF COURT AND CAUSE.]

ORDER ALLOWING APPEAL

Upon reading the petition of William C. McDuffie, as Receiver of Richfield Oil Company of California and Pan American Petroleum Company for an appeal from the decree in the above entitled cause and upon consideration of the Assignment of Errors filed herewith,

IT IS HEREBY ORDERED that the appeal herein be allowed as prayed for; and

IT IS FURTHER ORDERED that a certified transcript of the record and of all proceedings be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, and

IT IS FURTHER ORDERED that in pursuance of the stipulation waiving security filed herewith no bond or security on this appeal, either for costs or otherwise, shall be required.

DATED: this 26 day of January, 1935.

Wm. P. James

Judge of the United States District Court, Southern District of California, Central Division.

[Endorsed]: Filed Jan. 26, 1935.

[TITLE OF COURT AND CAUSE.]

STIPULATION

IT IS HEREBY STIPULATED by and between the solicitors for the respective parties hereto that no bond or undertaking on the part of the defendants William C. McDuffie, as Receiver of Richfield Oil Company of California and Pan American Petroleum Company herein, on their appeal to the United States Circuit Court of Appeals for the Ninth Circuit be required; and that an order may be entered herein to that effect without further notice.

DATED this 26 day of January 1935.

MUDGE, STERN, WILLIAMS & TUCKER
FREESTON & FILES

By Clarence M. Hanson

Solicitors for Plaintiff

GIBSON, DUNN & CRUTCHER

By Homer D. Crotty

Solicitors for Defendant William C. McDuffie, as Receiver of Richfield Oil Company of California.

Clayton T. Cochran

Solicitor for Defendant Pan American Petroleum Company.

David P. Evans
Of Counsel

[Endorsed]: Filed Jan. 26, 1935.

[TITLE OF COURT AND CAUSE.]

ACKNOWLEDGMENT OF SERVICE

Due service of the hereinafter designated papers is hereby admitted this 26 day of January, 1935:

1. Assignment of Errors
2. Petition for Appeal
3. Order granting Appeal

MUDGE, STERN, WILLIAMS & TUCKER
FRESTON & FILES

By Clarence M. Hanson

Solicitors for Plaintiff

[Endorsed]: Filed Jan. 26, 1935.

[TITLE OF COURT AND CAUSE.]

PRAECIPE ON APPEAL FROM DECREE OF
DECLARATORY JUDGMENT

TO THE CLERK OF THE ABOVE ENTITLED
COURT:

YOU ARE HEREBY requested to make a transcript of the record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to an appeal allowed in the above entitled cause and to include in such transcript of record the following and no other papers, to-wit:

1. Complaint for Declaratory Judgment
2. Answer of William C. McDuffie, as Receiver of Richfield Oil Company of California
3. Answer of defendant Pan American Petroleum Company
4. Answer of defendant William C. McDuffie, as Receiver of Pan American Petroleum Company
5. Notice of Motion of defendant William C. McDuffie, as Receiver of Richfield Oil Company of California to strike from the Complaint herein certain portions thereof.
6. Notice of Motion of defendant Pan American Petroleum Company to strike from the Complaint herein certain portions thereof.
7. Motion of defendant William C. McDuffie, as Receiver of Richfield Oil Company of California to strike from the Complaint herein certain portions thereof.

8. Motion of defendant Pan American Petroleum Company to strike from the Complaint herein certain portions thereof.

9. Stipulation providing for submission of Motions to Strike for decision without argument

10. Order of the Honorable William P. James dated November 2, 1934 for the submission for decision of Motions to Strike by defendants Pan American Petroleum Company and William C. McDuffie, as Receiver of Richfield Oil Company of California.

11. Order of the Honorable William P. James dated January 16, 1935, denying Motions to Strike

12. Notice of Motion of defendants Pan American Petroleum Company and William C. McDuffie, as Receiver of Richfield Oil Company of California for judgment, and endorsements thereon

13. Motion for Judgment of defendants Pan American Petroleum Company and William C. McDuffie, as Receiver of Richfield Oil Company of California

14. Minutes of Clerk of Court dated January 25, 1935, Judge James

15. Opinion and Order of the Honorable William P. James dated January 24, 1935

16. Decree made under date of January 24, 1935 and entered under date of January 25, 1935

17. Petition for Appeal, and order allowing Appeal

18. Assignment of Errors

19. Stipulation waiving bond on appeal

20. Citation on Appeal, and endorsements thereon

21. Acknowledgment of Service of (1) Assignment of Errors (2) Petition for Appeal (3 Order allowing Appeal

22. Praecepta, and endorsements thereon.

Said transcript to be prepared as required by law and the rules of this Court and the rules of the United States Circuit Court of Appeals for the Ninth Circuit, and to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, within the time and in the manner required by law and the rules of the Court.

DATED this 30th day of January 1935.

GIBSON, DUNN & CRUTCHER

By Homer D. Crotty

Solicitors for Defendant William C. McDuffie, as Receiver of Richfield Oil Company of California.

Clayton T. Cochran

Solicitor for Defendant Pan American Petroleum Company

David P. Evans

Of Counsel

[Endorsed]: Service of foregoing praecipe and receipt of copy is hereby acknowledged this 30th day of January, 1935. Clarence M. Hanson Solicitor of record for Plaintiff Filed Jan. 31, 1935.

[TITLE OF COURT AND CAUSE.]

CLERK'S CERTIFICATE.

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 81 pages, numbered from 1 to 81 inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation; complaint; answer of William C. McDuffie, as Receiver of Richfield Oil Company of California; answer of Pan American Petroleum Company; answer of William C. McDuffie, as Receiver of Pan American Petroleum Company; notice of motion and motion to strike from complaint by William C. McDuffie, as Receiver of Richfield Oil Company of California; notice of motion and motion to strike from complaint by Pan American Petroleum Company; stipulation and order providing for submission of motions to strike for decision without argument; order of January 16, 1935, denying motions to strike; notice of motion and motion for judgment; order of January 25, 1935, ordering judgment in favor of plaintiff; opinion and order; decree; petition for appeal; assignment of errors; order allowing appeal; stipulation waiving bond; acknowledgment of service of appeal papers, and praecipe.

I DO FURTHER CERTIFY that the amount paid for printing the foregoing record on appeal is \$ _____ and that said amount has been paid the printer by the appellant herein and a receipted bill is herewith enclosed, also that

the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to..... and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Central Division, this..... day of February, in the year of Our Lord One Thousand Nine Hundred and Thirty-five, and of our Independence the One Hundred and Fifty-ninth.

R. S. ZIMMERMAN,
 Clerk of the District Court of the
 United States of America, in
 and for the Southern District
 of California.

By

Deputy.

